

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) BARCLAY DAMON LLP Scott L. Fleischer, Esq. 1270 Avenue of the Americas, Suite 501 New York, NY 10020 Telephone: (212) 784-5810 Email: sfleischer@barclaydamon.com SINGER & LEVICK, P.C. Michelle E. Shriro Texas State Bar No. 18310900 16200 Addison Road, Suite 140 Addison, Texas 75001 Telephone: 972.380.5533 Fax: 972.380.5748 Email: mshriro@singerlevick.com <i>ATTORNEYS FOR RED DEVELOPMENT, LLC</i>	
In re: BED BATH & BEYOND INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 23-13359 (VFP) Judge: Vincent F. Papalia (Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS TO DEBTORS'
NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

COMES NOW, RED Development, LLC (“RED”), by and through its counsel Singer & Levick, P.C. and Barclay Damon LLP, and files this, its *Limited Objection and Reservation of*

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

Rights to Debtors' Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (“**Objection**”) and, in support of same, would respectfully show as follows:

1. RED is the managing agent for four (4) related entities (together, “**RED Landlords**”). The Debtors are parties to numerous non-residential real property leases (collectively, “**Leases**”) with the RED Landlords, each of which own and lease certain non-residential property in various shopping centers. The locations for these Leases are shopping centers within the meaning of Section 365(b)(3) of the BANKRUPTCY CODE.

2. On April 23, 2023 (“**Petition Date**”), Bed Bath & Beyond, Inc. and its related Debtor entities (together, “**Debtors**”) each filed voluntary Petitions for Chapter 11 protection under Title 11 of the UNITED STATES CODE (“**BANKRUPTCY CODE**”) with the United States Bankruptcy Court for the District of New Jersey (“**Bankruptcy Court**”), which cases have been jointly consolidated for administrative purposes only (“**Chapter 11 Cases**”). The Debtors continue to operate their businesses and manage their properties as Debtors and Debtors-in-Possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. On April 25, 2023, the Bankruptcy Court entered the *Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief* (“**Bidding Procedures Order**”) (Dkt.092).

4. Pursuant to such Bidding Procedures Order, on June 13, 2023, the Debtors filed their *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (“**Assumption Notice**”) (Dkt.714).

5. Contained within such Assumption Notice as *Exhibit A* (see Dkt.714: P.6-46) was a listing of the contracts and leases which were subject to such potential assumption and assignment, as well as the proposed cure amounts for each counterparty/Landlord set forth (“**Proposed Cure Amount**”).

6. Two (2) of the RED Landlords have been listed in the Assumption Notice – 168th and Dodge, LP (“**Village Pointe**”) located at 255 N. 170th Street, Omaha, NE, and R.E.D. Capital Management, LLC (“**SouthPointe**”) located at 2960 Pine Lake Road, Suite A, Lincoln, NE (together, “**RED Leases**”). The remaining two RED Landlords who have leases with the Debtors (Chandler Village Center, LLC and Jefferson Pointe Center SPE, LLC) have each been previously rejected pursuant to this Court’s *Order (I) Authorizing (A) Rejection of Certain Unexpired Leases and (B) Abandonment of any Personal Property, Effective as of the Rejection Date and (II) Granting Related Relief* (“**First Rejection Order**”) (Dkt.373).

7. Attached hereto as **Exhibit A**, and incorporated herein by reference, is a chart which shows the two RED Leases that are the subject of this pleading, the Debtors’ Proposed Cure Amounts, as well as the amounts listed on the books and records of each RED Landlord as the amounts owed as of June 16, 2023 for the affected Leases (“**Correct Cure Amount**”).

CURE OBJECTION AND BASIS THEREFORE

8. The RED Landlords are not objecting to the assumption of its Leases but rather file this limited objection for the purpose of objecting to the entry of any Order that sets the Proposed Cure Amount listed on Exhibit A as the final cure amount for their Leases and submit that the Correct Cure Amount is the current amount which should be used in any final order authorizing the assumption of the Leases and/or establishing the cure amount, plus any additional unpaid amounts which accrue and remain unpaid prior to the date of assumption. These amounts include

post-petition charges which remain unpaid, including any charges which may accrue prior to the date of assumption.

9. Prior to the date of any assumption or assignment, and regardless of when those amounts accrue, pursuant to the contractual obligations of the Leases, other amounts such as common area maintenance, taxes, insurance and potentially other amounts, including any periodic adjustment of charges, may come due to the RED Landlords. Either any cure amount should include any unpaid amounts which accrue prior to the date of any assumption and assignment, or the Debtors or any assignee must be responsible for payment of these amounts.

10. Additionally, the Proposed Cure Amounts do not include amounts that may become due under the Leases after the date of the assumption and assignment that relate to the pre-assumption and assignment period (i.e., real estate taxes, etc.). Any proposed Order establishing a cure amount in connection with the assumption of the Leases must provide for the payment of all charges due and/or accrued in the ordinary course under the terms of the Leases, notwithstanding the cure amount, that will become payable after the date of the assumption.

11. Additionally, there may also be unknown and/or unasserted claims that may exist presently or may exist in the future against the RED Landlords for which the Debtors may be obligated to indemnify and defend the RED Landlords. The RED Landlords reserve their rights under the Leases and all applicable law to assert a claim for any and all amounts which may be due and owing for any currently unknown and/or unasserted claim against the RED Landlords that may presently exist or may exist in the future for which the Debtors may be obligated to indemnify and defend the RED Landlords. Any assumption of the Leases must include these obligations.

12. To assume an executory contract or unexpired contract, a debtor-in-possession must, at the time of assumption: (a) cure all existing defaults; (b) compensate the non-debtor party for any actual pecuniary loss resulting from such defaults; and (c) provide adequate assurance of

future performance under the contract. 11 U.S.C. § 365(b)(1). When assuming a contract, the debtor must do so *cum onere*, with all the burdens as well as the benefits. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (“[s]hould the debtor in possession elect to assume the executory contract, ... it assumes the contract cum onere”); *In re Fleming Companies, Inc.*, 499 F.3d 300, 308 (3d Cir. 2007) (citations omitted). If a contract is proposed to be assigned to a purchaser or other third party, the requirement of adequate assurance of future performance is applicable to such assignee. *See* 11 U.S.C. § 365(f)(2)(B); *In re Fleming Companies, Inc.*, 499 F.3d at 305.

13. Accordingly, any Order that is entered establishing a cure amount with respect to the Leases must require the Debtors to (1) pay the RED Landlords their actual cure amount, (2) comply with all obligations under the Leases pursuant to 11 U.S.C. § 365(b)(3) pending the actual assumption of the Leases, (3) cure any additional defaults that may occur under the Leases between the date of this Objection and the effective date of any assumption by the Debtors (*see* 11 U.S.C. §365(b)(1), and (4) ensure that the Debtors or any assignee will be expressly responsible and liable for the payment of any charges that come due under the Leases post-assumption and assignment, but that may relate to a pre-assumption and assignment period. In addition, any purchaser must execute a document in a form acceptable by the RED Landlords in which it ratifies the Leases and assumes the obligations.

RESERVATION OF RIGHTS CONCERNING CURE AND ASSUMPTION

14. The RED Landlords reserve their rights to supplement this Objection prior to any final determination by the Court regarding assumption and assignment of the Leases, including the amount and payment required for purposes of cure under Section 365 of the BANKRUPTCY CODE.

15. The RED Landlords further reserve the right to object to any other relief sought by the Debtors in connection with any proposed assignment including, without limitation, any proposed showing of adequate assurance of future performance for any purchaser if assigned.

16. This Reservation of Rights is not intended to be, nor should be construed as, a waiver by the RED Landlords of any of their rights under the Leases, the BANKRUPTCY CODE, or applicable law. RED files this Objection and Reservation of Rights to reserve and preserve any and all rights of the RED Landlords in connection with any proposed assumption and assignment of their Leases and adequate assurance including, without limitation, issues regarding the financial condition and ability of any proposed assignee to meet the heightened requirements for assumption and assignment of contracts and leases as set forth in Section 365 of the BANKRUPTCY CODE.

JOINDER TO OTHER LANDLORD OBJECTIONS

17. RED, on behalf of the RED Landlords, and to the extent not inconsistent with the Objections expressed herein, joins in the Objections and Responses to the Assumption Notice asserted by other landlord objectors.

18. RED, on behalf of the RED Landlords, further reserves all rights to object to any other relief sought by the Debtors in connection with the Assumption Notice.

19. RED's Objection and Joinder is not intended to be, nor should be construed as, a waiver by the RED Landlords of any of their rights under the RED Leases, the BANKRUPTCY CODE, or applicable law. RED, on behalf of the RED Landlords, files this Objection and Joinder to reserve and preserve any and all rights any of the RED Landlords have in connection with their individual Leases.

PRAYER

WHEREFORE, PREMISES CONSIDERED, RED Development, LLC, as managing agent for the RED Landlords, requests that the Court enter an Order:

- (a) establishing the actual cure amount owed to each Lease consistent with the Correct Cure Amount set forth on Exhibit A;
- (b) requiring the Debtors to comply with all obligations under the Leases pursuant to 11 U.S.C. § 365(d)(3) pending the actual assumption of the Leases;
- (c) requiring the Debtors to cure any additional defaults that may occur under the Leases between the date of this Objection and the effective date of any assumption by the Reorganized Debtors;
- (d) requiring the Debtors to ensure that the proposed purchaser be expressly responsible and liable for the payment of any charges that come due under the Leases post-assumption and assignment, including the year-end adjustment, but that may relate to a pre-assumption and assignment period; and
- (e) granting the RED Landlords such additional and further relief as the Court may deem to be just and proper.

DATED: **July 4, 2023**
 New York, New York

Respectfully submitted,

BARCLAY DAMON LLP

By: /s/ Scott L. Fleischer
Scott L. Fleischer
1270 Avenue of the Americas, Suite 501
New York, New York 10020
Telephone: (212) 784-5810
Fax: (212) 784-5799
E-mail: sfleischer@barclaydamon.com

- and -

SINGER & LEVICK, P.C.

Michelle E. Shiro
Texas State Bar No. 18310900
16200 Addison Road, Suite 140
Addison, Texas 75001
Phone: 972.380.5533
Fax: 972.380.5748
Email: mshiro@singerlevick.com

ATTORNEYS FOR:
RED DEVELOPMENT, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District, which includes the parties as shown below, and via electronic mail as required by the Assumption Notice as shown below, on this 4th day of July, 2023.

<u>Debtors:</u> Bed Bath & Beyond, Inc. 650 Liberty Avenue Union, NJ 07083 VIA ECF Noticing through its Attorneys	<u>Counsel for Debtors:</u> Cole Schotz P.C. 25 Main Street Hackensack, NJ 07601 Attn: Michael D. Sirota Email: msirota@coleschotz.com Attn: Felice R. Yudkin Email: fyudkin@coleschotz.com Attn: Warren A. Usatine Email: wusatine@coleschotz.com Kirkland and Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Joshua A. Sussberg Email: joshua.sussberg@kirkland.com Attn: Emily E. Geier Email: emily.geier@kirkland.com Attn: Derek I. Hunter Email: derek.hunter@kirkland.com Attn: Ross J. Fiedler Email: ross.fiedler@kirkland.com VIA ECF Noticing and/or VIA Email
---	---

<p><u>Counsel for Prepetition ABL Agent:</u> Marshall S. Huebner Adam L. Shpeen Steven Z. Szanzer Michael Pera Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Attn: Marshall S. Huebner Email: marshall.huebner@davispolk.com Attn: Adam L. Shpeen Email: adam.shpeen@davispolk.com Attn: Steven Z. Szanzer Email: steven.szanzer@davispolk.com Attn: Michael Pera Email: michael.pera@davispolk.com</p> <p>VIA ECF Noticing and/or VIA Email</p>	<p><u>Counsel to DIP Agent:</u> Proskauer Rose LLP Eleven Times Square New York, NY 10036 Attn: David M. Hillman Email: dhillman@proskauer.com Attn: Megan R. Volin Email: mvolin@proskauer.com</p> <p>VIA ECF Noticing and/or VIA Email</p>
<p><u>Stalking Horse Bidder:</u> Chief Legal Officer and Corporate Secretary Overstock.com, Inc. 799 W. Coliseum Way Midvale, UT 84047 Email: gnickle@overstock.com</p> <p>VIA ECF Noticing and/or VIA Email</p>	<p><u>Counsel to Stalking Horse Bidder:</u> Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles E-Mail: skcharles@wlrk.com Attn: Michael S. Benn Email: msbenn@wlrk.com Attn: Gordon S. Moodie Email: gsmoodie@wlrk.com</p> <p>VIA ECF Noticing and/or VIA Email</p>
<p><u>Counsel to the Committee:</u> Pachulski Stang Ziehl & Jones LLP 780 Third Avenue, 34th Floor New York, NY 10017 Attn: Robert J. Feinstein Email: rfeinstein@pszjlaw.com Attn: Bradford J. Sandler Email: bsandler@pszjlaw.com Attn: Paul J. Labov Email: plabov@pszjlaw.com Attn: Colin R. Robinson Email: crobinson@pszjlaw.com</p> <p>VIA ECF Noticing and/or VIA Email</p>	<p><u>US Trustee:</u> Office of the US Trustee One Newark Center Raymond Blvd., Suite 2100 Newark, NJ 07102-5504 Attn: Fran B. Steele Email: fran.b.steele@usdoj.gov</p> <p>VIA ECF Noticing and/or VIA Email</p>

/s/ Scott L. Fleischer
Scott L. Fleischer

Exhibit A

RED Leases – Proposed Cure Amount // Correct Cure Amount

Landlord	Proposed Cure Amount	Correct Cure Amount	See Ledger
168th and Dodge, LP ("Village Pointe")	\$ 0.00	\$ 82,644.82	A-1
R.E.D. Capital Management, LLC ("SouthPointe")	\$ 0.00	\$ 45,193.13	A-2

Exhibit A-1

Database	REDDEVELOP	Aged Delinquencies	Page:	1
Report ID:	RED_CMAGEDEL	RED Development, LLC	Date:	6/16/2023
User:	REDCW207	Village Pointe	Time:	2:05 PM
ENTITY:	07	Date: 6/16/2023		

Invoice Date	Category	Source	Amount	Current	30	60	90	120
--------------	----------	--------	--------	---------	----	----	----	-----

07-000007	Bed Bath & Beyond Management Corp.		Master Occupant Id: 00000007-1		Day Due: 1	Delq Day: 10		
	leasepayable@bedbath.com		U100	Current	Last Payment:	6/1/2023	44,731.40	
			Sec Deposit:	0.00				
7/1/2020	CAM	AUTOCHRG @T7/31/2020	CH	1,566.66	0.00	0.00	0.00	1,566.66
7/1/2020	INS	AUTOCHRG @T7/31/2020	CH	140.10	0.00	0.00	0.00	140.10
10/1/2020	MKT	AUTOCHRG @T10/31/2020	CH	275.00	0.00	0.00	0.00	275.00
2/1/2023	RNT	AUTOCHRG @T2/28/2023	CH	254.00	0.00	0.00	0.00	254.00
3/27/2023	PYR	2022 RET -1st Installment	CH	83,464.02	0.00	0.00	83,464.02	0.00
4/1/2023	PYC	2022 Reconciliation	CH	0.18	0.00	0.00	0.18	0.00
4/1/2023	PYI	2022 Reconciliation	CH	105.86	0.00	0.00	105.86	0.00
4/1/2023	PYM	2022 Reconciliation	CH	74.76	0.00	0.00	74.76	0.00
4/1/2023	PYO	2019-2020-Audit Fee-Other C	NC	-1,000.00	0.00	0.00	-1,000.00	0.00

CAM	Common Area Maintenance	1,566.66	0.00	0.00	0.00	0.00	1,566.66
INS	Insurance	140.10	0.00	0.00	0.00	0.00	140.10
MKT	Marketing Fund Income	275.00	0.00	0.00	0.00	0.00	275.00
PYC	CAM - Prior Year	0.18	0.00	0.00	0.18	0.00	0.00
PYI	Insurance - PY	105.86	0.00	0.00	105.86	0.00	0.00
PYM	Marketing - Prior Year	74.76	0.00	0.00	74.76	0.00	0.00
PYO	Prior Year Other CAM	-1,000.00	0.00	0.00	-1,000.00	0.00	0.00
PYR	Real Estate Tax - PY	83,464.02	0.00	0.00	83,464.02	0.00	0.00
RNT	Base Rent	254.00	0.00	0.00	0.00	0.00	254.00

Bed Bath & Beyond Management Corp. Tot 84,880.58 0.00 0.00 82,644.82 0.00 2,235.76

CAM	Common Area Maintenance	1,566.66	0.00	0.00	0.00	0.00	1,566.66
INS	Insurance	140.10	0.00	0.00	0.00	0.00	140.10
MKT	Marketing Fund Income	275.00	0.00	0.00	0.00	0.00	275.00
PYC	CAM - Prior Year	0.18	0.00	0.00	0.18	0.00	0.00
PYI	Insurance - PY	105.86	0.00	0.00	105.86	0.00	0.00
PYM	Marketing - Prior Year	74.76	0.00	0.00	74.76	0.00	0.00
PYO	Prior Year Other CAM	-1,000.00	0.00	0.00	-1,000.00	0.00	0.00
PYR	Real Estate Tax - PY	83,464.02	0.00	0.00	83,464.02	0.00	0.00
RNT	Base Rent	254.00	0.00	0.00	0.00	0.00	254.00

ENTITY 07 Total: 84,880.58 0.00 0.00 82,644.82 0.00 2,235.76

Exhibit A-2

Database	REDDEVELOP	Aged Delinquencies	Page:	2
Report ID:	RED_CMAGEDEL	RED Development, LLC	Date:	6/16/2023
User:	REDCW207	SouthPointe Pavilions	Time:	2:05 PM
ENTITY:	522	Date: 6/16/2023		

Invoice Date	Category	Source	Amount	Current	30	60	90	120
--------------	----------	--------	--------	---------	----	----	----	-----

02-002061	Bed Bath & Beyond Store #211			Master Occupant Id: 00001325-2		Day Due: 1	Delq Day: 10		
				2960A	Current	Last Payment:	6/2/2023	24,132.88	
		(908) 855-2227		Sec Deposit:	0.00				
3/31/2023	PYC	2022 Recovery Reconciliation	CH	4,996.40	0.00	0.00	4,996.40	0.00	0.00
4/1/2023	CAM	AUTOCHRG @T4/30/2023	CH	6,755.07	0.00	0.00	6,755.07	0.00	0.00
4/1/2023	RET	AUTOCHRG @T4/30/2023	CH	6,657.15	0.00	0.00	6,657.15	0.00	0.00
4/1/2023	RNT	AUTOCHRG @T4/30/2023	CH	26,736.11	0.00	0.00	26,736.11	0.00	0.00
4/1/2023	WAT	AUTOCHRG @T4/30/2023	CH	48.40	0.00	0.00	48.40	0.00	0.00

CAM	Common Area Maintenance	6,755.07	0.00	0.00	6,755.07	0.00	0.00
PYC	CAM - Prior Year	4,996.40	0.00	0.00	4,996.40	0.00	0.00
RET	Real Estate Tax	6,657.15	0.00	0.00	6,657.15	0.00	0.00
RNT	Base Rent	26,736.11	0.00	0.00	26,736.11	0.00	0.00
WAT	Water	48.40	0.00	0.00	48.40	0.00	0.00

Bed Bath & Beyond Store #211 Total: 45,193.13 0.00 0.00 45,193.13 0.00 0.00

CAM	Common Area Maintenance	6,755.07	0.00	0.00	6,755.07	0.00	0.00
PYC	CAM - Prior Year	4,996.40	0.00	0.00	4,996.40	0.00	0.00
RET	Real Estate Tax	6,657.15	0.00	0.00	6,657.15	0.00	0.00
RNT	Base Rent	26,736.11	0.00	0.00	26,736.11	0.00	0.00
WAT	Water	48.40	0.00	0.00	48.40	0.00	0.00

ENTITY 522 Total: 45,193.13 0.00 0.00 45,193.13 0.00 0.00

CAM	Common Area Maintenance	8,321.73	0.00	0.00	6,755.07	0.00	1,566.66
INS	Insurance	140.10	0.00	0.00	0.00	0.00	140.10
MKT	Marketing Fund Income	275.00	0.00	0.00	0.00	0.00	275.00
PYC	CAM - Prior Year	4,996.58	0.00	0.00	4,996.58	0.00	0.00
PYI	Insurance - PY	105.86	0.00	0.00	105.86	0.00	0.00
PYM	Marketing - Prior Year	74.76	0.00	0.00	74.76	0.00	0.00
PYO	Prior Year Other CAM	-1,000.00	0.00	0.00	-1,000.00	0.00	0.00
PYR	Real Estate Tax - PY	83,464.02	0.00	0.00	83,464.02	0.00	0.00
RET	Real Estate Tax	6,657.15	0.00	0.00	6,657.15	0.00	0.00
RNT	Base Rent	26,990.11	0.00	0.00	26,736.11	0.00	254.00
WAT	Water	48.40	0.00	0.00	48.40	0.00	0.00

Grand Total: 130,073.71 0.00 0.00 127,837.95 0.00 2,235.76